

LANDSCAPE MAINTENANCE AGREEMENT

ARIZONA PROJECT S-590-501

BUSINESS ROUTE B-10 & STATE HIGHWAY 186
(Grant St. to Stewart St. on B-10 and
Haskell Ave. to Railroad Ave. on State 186)
City of Willcox

THIS AGREEMENT, made this 10th day of August, 1987, pursuant to A.R.S. Sec. 11-951 through Sec. 11-954, by and between the Department of Transportation, Highways Division, an agency of the State of Arizona, thereunto duly authorized, hereinafter designated Department of Transportation and the City of Willcox, a municipal corporation, acting by and through its City Council, thereunto duly authorized, hereinafter designated as City.

WITNESSETH:

WHEREAS, the City is empowered by A.R.S. Sec. 9-672B to enter into this agreement and acting by and through its City Council, has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute same on behalf of the City; and

WHEREAS, it is to the mutual advantage of the Department of Transportation and the City to landscape certain areas within the right-of-way on Business Route B-10 and State Highway 186 from centerline roadway station 1826+30, to centerline roadway station 1835+87 on B-10, and centerline roadway station 1730+31 to centerline roadway station 1735+61.5 on State Highway 186, a net distance of approximately .28 miles.

NOW THEREFORE, it is hereby mutually agreed by and between the Department of Transportation and the City, pursuant to the authority contained in A.R.S. Sec. 28-108 as follows:

1. The Department of Transportation will prepare plans for the landscaping project and submit them to the City for approval.

JUL - 5 1988

ED SINDEL

NO. <u>12317</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>8-31-87</u>
<i>[Signature]</i>
Secretary of State

2. Upon approval, the project will be constructed by the Department of Transportation, using State funds. Upon completion of the work, the City shall reimburse the Department of Transportation 25% of the final construction costs.

3. The City shall make available and furnish all water for landscape installation during construction phase, and all water hereafter necessary to properly maintain the landscape within the right-of-way on Business Route B-10 and State Highway 186 for the landscaping, all as shown on the project plans from centerline roadway station 1826+30, to centerline roadway station 1835+87 on B-10, and centerline roadway station 1730+31 to centerline roadway station 1735+61.5 on State Highway 186, all at City expense.

4. After construction the City shall maintain the landscaping within the right-of-way on Business Route B-10 and State Highway 186 from centerline roadway station 1826+30, to centerline roadway station 1835+87 on B-10, and centerline roadway station 1730+31 to centerline roadway station 1735+61.5 on State Highway 186.

5. The City hereby agrees to maintain the landscaping in an attractive manner, as it was designed and approved by the Department of Transportation, and the City will not make any changes, additions or deletions without written approval by the Department of Transportation, Roadside Development Services. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic.

6. The parties hereto further agree that to the extent permitted by law, the Department of Transportation and City agree to defend, indemnify, and hold harmless each other and their agents, officials, employees and subsidiaries, from and against any and all claims, actions, demands, liability, damage, cost and expense of whatsoever character whether direct or indirect, or consequential, including loss or damage to property of either party hereto or of their persons and for the injury or death to any or all persons caused by or attributable to the negligence or fault of the Department of Transportation or the City, their employees or agents. As to any liability claims where the parties hereto may be jointly at fault, whether or not a named defendant to an action, the parties agree that they will share in any settlement or judgement on the amount that is proportionate to the degree of negligence or fault of the respective parties as agreed to between them or adjudicated by the courts. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. Sec. 12-1518 (B) and (C).

7. This agreement shall be filed with the Secretary of State and shall become effective on the date of such filing.

8. Attached hereto are resolutions of the Department of Transportation and the City authorizing both entities to enter into this agreement, and a written determination by the City Attorney of Willcox that this agreement is in proper form and within the powers and authority granted to the City under the laws of this State.

9. The effective date of this agreement shall be upon filing with the Secretary of State and shall remain in full force and effect for a period of five (5) years from the effective date unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless the parties hereto mutually agree by formal amendment reflected herein to this agreement not less than one (1) month prior to the initial or renewed expiration date.

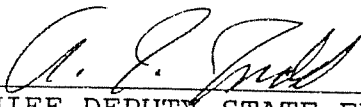
10. All parties are hereby put on notice that this Contract (Agreement) is subject to cancellation by the Governor, pursuant to A.R.S. Sec. 38-511.

IN WITNESS WHEREOF the parties have executed two copies of this agreement on the day and year herein written.

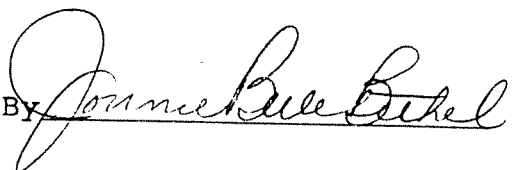
ARIZONA DEPARTMENT OF TRANSPORTATION

CITY OF WILLCOX, a
municipal corporation

By


CHIEF DEPUTY STATE ENGINEER

By



STATE OF ARIZONA)
 : SS
County of Cochise)

I, Jonnie Belle Bethel, Mayor of
the City of Willcox, Arizona, do hereby certify that the
following is a true and correct extract of the minutes of the
City Council meeting held Tuesday, July 14, 1987.

In Witness Whereof, I have hereunto set my hand and
affixed the Official Seal of the City of Willcox, Arizona.
Done in Willcox, Arizona this 27th day of July,
1987.

Jonnie Belle Bethel

RESOLUTION NO. 87-01

A RESOLUTION BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA,
APPROVING A LANDSCAPE MAINTENANCE AGREEMENT
BETWEEN THE STATE OF ARIZONA, DEPARTMENT OF
TRANSPORTATION, AND THE CITY OF WILLCOX RESPECTING
BUSINESS ROUTE B-10 AND STATE HIGHWAY 186, ARIZONA
PROJECT S-590-501.

WHEREAS, it has been determined that it is to the mutual advantage of the Department of Transportation and the City of Willcox to landscape certain areas within the right-of-way on Business Route B-10 and State Highway 186; and

WHEREAS, the State of Arizona, Department of Transportation, has provided an intergovernmental agreement specifying exact locations and procedures to be utilized in the accomplishment of this landscaping project; and

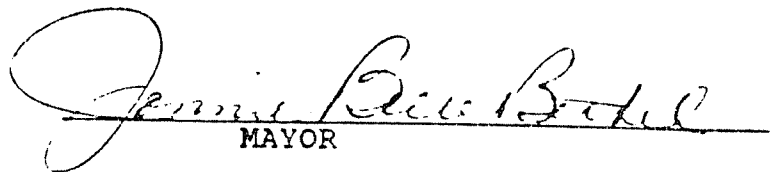
WHEREAS, the City of Willcox has found the terms and conditions of said agreement to be acceptable; and

WHEREAS, the City of Willcox is empowered by A.R.S. Sec. 9-672B to enter into this agreement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Willcox, Arizona, do hereby accept and approve the Landscape Maintenance Agreement regarding Arizona Project S-590-501.

~~BE IT FURTHER RESOLVED~~ that the Mayor of the City of Willcox is authorized, empowered and directed to execute said agreement on behalf of the City of Willcox.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, ON THIS 14th DAY OF JULY, 1987.


MAYOR

ATTEST:


CITY CLERK

(SEAL)

RESOLUTION NO. 87-1

APPROVAL OF THE CITY ATTORNEY

I hereby state that I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, STATE ENGINEER and the CITY OF WILLCOX and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 23rd day of June, 1987.


JAMES E. HOLLAND

City Attorney



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR 87-2014, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

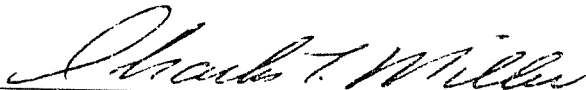
DATED this 19 day of August, 1987.

ROBERT K. CORBIN
Attorney General

Albert Morison
Assistant Attorney General
Transportation Division

RESOLUTION

Be it resolved on this date, August 10, 1987, I, CHARLES L. MILLER, the below undersigned Director, Department of Transportation, have determined that it is to be to the advantage of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, and the CITY OF WILLCOX, acting by and through its CITY COUNCIL enter into the intergovernmental agency agreement for the purpose of entering in a landscape maintenance agreement for certain projects which have been selected by the State and subject to the approval of the City of Willcox as by law required; and request the City to perform certain work and supply necessary materials required to maintain the specified areas in the manner specified in the attached agreement.



CHARLES L. MILLER, Director
Department of Transportation

7. This agreement shall be filed with the Secretary of State and shall become effective on the date of such filing.

8. Attached hereto are resolutions of the Department of Transportation and the City authorizing both entities to enter into this agreement, and a written determination by the City Attorney of Willcox that this agreement is in proper form and within the powers and authority granted to the City under the laws of this State.

9. The effective date of this agreement shall be upon filing with the Secretary of State and shall remain in full force and effect for a period of five (5) years from the effective date unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless the parties hereto mutually agree by formal amendment reflected herein to this agreement not less than one (1) month prior to the initial or renewed expiration date.


10. All parties are hereby put on notice that this Contract (Agreement) is subject to cancellation by the Governor, pursuant to A.R.S. Sec. 38-511.

IN WITNESS WHEREOF the parties have executed two copies of this agreement on the day and year herein written.

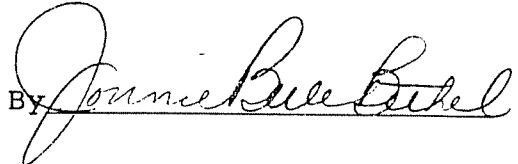
ARIZONA DEPARTMENT OF TRANSPORTATION

CITY OF WILLCOX, a
municipal corporation

By


CHIEF DEPUTY STATE ENGINEER

By



STATE OF ARIZONA)
 : SS
County of Cochise)

I, Jonnie Belle Bethel, Mayor of
the City of Willcox, Arizona, do hereby certify that the
following is a true and correct extract of the minutes of the
City Council meeting held Tuesday, July 14, 1987.

In Witness Whereof, I have hereunto set my hand and
affixed the Official Seal of the City of Willcox, Arizona.
Done in Willcox, Arizona this 27th day of July,
1987.

Jonnie Belle Bethel

A RESOLUTION BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF WILLCOX, COCHISE COUNTY, ARIZONA,
APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL
MAINTENANCE AGREEMENT BETWEEN THE STATE OF
ARIZONA, DEPARTMENT OF TRANSPORTATION, AND THE
CITY OF WILLCOX RESPECTING MAINTENANCE OF CERTAIN
STATE HIGHWAYS WHICH TRAVERSE THE CITY OF WILLCOX.

WHEREAS, effective April 1, 1981, the State of Arizona, Department of Transportation and the City of Willcox entered into an agreement respecting maintenance of certain State highways which traverse the City of Willcox, specifically Haskell Avenue, Maley Street and Rex Allen Drive; and

WHEREAS, this intergovernmental agreement has been automatically renewed for successive periods of one (1) year since its effective date; and

WHEREAS, the City of Willcox and the State of Arizona, Department of Transportation, have determined that assignment of permitting authority to the City of Willcox for highway rights of way encroachments and use on these specific roadways would be mutually beneficial to the parties in this agreement; and

WHEREAS, the State of Arizona Department of Transportation has provided an amendment to this agreement granting this permitting authority to the City of Willcox; and

WHEREAS, the City of Willcox has found the terms and conditions of said amendment to be acceptable.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Willcox, Arizona, do hereby accept and approve the amendment to the intergovernmental maintenance agreement between the State of Arizona, Department of Transportation and the City of Willcox respecting permits for highway rights of way encroachments and use.

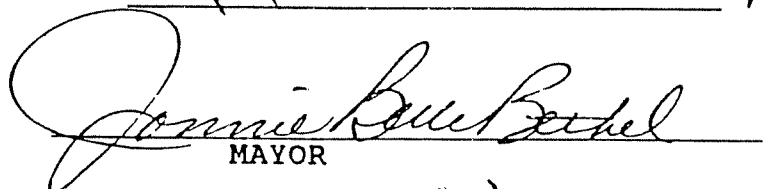
BE IT FURTHER RESOLVED that the City Manager of the City of Willcox is authorized, empowered and directed to execute said amendment on behalf of the City.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, ON THIS 14TH DAY OF April, 1987.

ATTEST:


CITY CLERK

(SEAL)


MAYOR

STATE OF ARIZONA
COUNTY OF COCHISE } ss.
CITY OF WILLCOX

I certify that the foregoing instrument is a full, true and correct copy of the original on file in this office.

Attested 6/24, 1987

Signed 
CITY CLERK



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. 87-1835, is an agreement ^{Amendment to} between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 24th day of July, 1987.

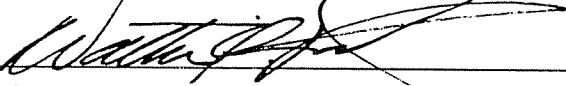
ROBERT K. CORBIN
Attorney General

Albert Morgan
Assistant Attorney General
Transportation Division

Amendment to the
INTERGOVERNMENTAL MAINTENANCE AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF WILLCOX

4. g. Permits for highway rights of way encroachments and use. Forms to be used for these permits will be furnished by the STATE (A.D.O.T. 22-5101 R6'77). A copy of each permit issued shall be sent to the STATE (P.O. Box 711, Safford, AZ) with a sketch showing the exact location of the encroachment. A copy of said form is attached hereto and incorporated herein as Exhibit "D-1", and by reference made a part hereof;
- Pipes, conduit or other utilities shall be jacked or bored beneath the paved areas. Pavement cuts shall be considered only when jacking, boring or other alternatives are proven impractical and then only when approved by the Area Engineer.

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION



W. O. FORD, State Engineer

APPLICATION FOR PERMIT TO USE STATE HIGHWAY RIGHT OF WAY
(Print or Type)

Application is hereby made for a permit to enter in upon and use a portion of the State Highway.

Name of Owner _____

Address of Owner _____

City _____ State _____ Zip _____

Name of Applicant _____ Legal Relationship to Owner _____

Mailing Address _____

City _____ State _____ Zip _____

Phone _____

Signature of Applicant _____

(Applicant and Owner are responsible for conditions on permit)

City (in or near) _____ Project No. _____

Highway Route No. _____ Approximately _____ Feet _____ of Milepost No. _____
Direction

Side of Highway N S E W (circle one) Highway Station _____

Purpose _____

FOR DEPARTMENTAL USE ONLY

THIS APPLICATION is approved with the following directions, requirements and specifications:

Dated _____

District Engineer

FOR AND IN CONSIDERATION of the granting of a permit or license for the purpose set forth herein the Licensee hereby agrees, covenants, and binds said Licensee as follows, to-wit:

1. The Licensee hereby agrees to save and hold harmless the State, any of its departments, agencies, officers or employees from all cost and damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or non-performance of any provision of this agreement or the exercise of this permit or license by Licensee, any of its agents, or any of its independent contractors. The above cost incurred by the State, any of its departments, agencies, officers, or employees shall include in the event of an action, court costs, expenses of litigation and reasonable attorneys' fees. When any above cost, damage occurs as aforesaid, Licensee assumes the burden of proof that the above activity, condition, or event did not cause such cost, damage, or other damage.
2. That all work done shall be at the sole cost and expense of the Licensee, and shall be done at such time and in such manner as to be least inconvenient to the traveling public, and as directed by the agent of the Licensor. Work must be finished in the time specified on permit.
3. That when the proposed work is completed the Licensee shall repair the roadbed and replace the surfacing material thereon and will leave the said road in as good a condition as it is now, so far as the road is affected by the Licensee.
4. If the subject of the permit or license fails to pass final inspection, the Licensee will remove or replace the same within such time as specified by written notice from the Licensor; or if at any time hereafter, any material used by the Licensee is replacing or reconstructing any part of said highway proves defective, the Licensee will replace the same with the kind and quality of material which the Licensor shall specify.
5. That if the title and possession of any property placed upon the right of way by the Licensee remains in said Licensee, the Licensee shall and will promptly perform all necessary repair work upon written notice from the Licensor, and will not permit or allow any condition to exist which would be a hazard or source of danger to the traveling public.
6. That if at any time hereafter the right of way, or any portion thereof, occupied and used by the Licensee may be needed or required by the Licensor, any permit or license granted in pursuance of this application, may be revoked by the Licensor and all right thereunder terminated, and upon sufficient notice, the Licensee shall and will remove all property belonging to said Licensee.
7. That in the event that the work to be done under the authority of the permit or license necessitates the creation of any hazard or source of danger to any person or vehicle using said highway, said Licensee shall and will provide and maintain at all times during the existence of said hazard, sufficient barriers, danger signals, lanterns, detours, and shall and will take such other measures of precaution as the Licensor shall direct.
8. That if the work to be undertaken is of such a nature or character that the Licensor deems it necessary that said work be laid out, or inspected by the Licensor, said Licensee will defray any and all expenses incurred by said Licensor, and herein agrees to reimburse the Licensor, and for that purpose will deposit with the Licensor a sum of money in the amount necessary to cover all cost incurred by the Licensor.
9. All construction to be as per final plans approved with permit.
10. Licensee agrees to advise the state of any change of ownership.

WHITE COPY TO APPLICANT AFTER PROCESSING
YELLOW COPY TO PERMIT DIVISION FILE
PINK COPY TO DISTRICT ENGINEER'S FILE
GREEN COPY TO DISTRICT ENGINEER'S INSPECTOR
BLUE COPY TO FHWA (INTERSTATE HIGHWAY ONLY)

PERMIT AND LICENSE

Permit No. _____

A permit and license is hereby issued to the foregoing licensee for the purpose contained in the application and upon the expressed condition that every agreement and covenant therein contained is faithfully performed, and said work to be performed in accordance with final approved plans and specifications. Construction is authorized only for period indicated below.

Dated _____

ARIZONA DEPARTMENT OF TRANSPORTATION

Construction to be completed by:

By _____

Date

Maintenance Permit Engineer